

INTRODUCTION OF FINANCIAL SERVICES PRIVACY LEGISLATION**STATEMENT OF REP. EDWARD J. MARKEY (D-MA)****AUGUST 6, 1998**

Mr. Speaker, today I am introducing two bills which are aimed at addressing the confidentiality of personal financial information, the "Securities Investors Privacy Enhancement Act of 1998" and the "Depository Institution Customers Financial Privacy Enhancement Act of 1998."

Today, the legal and regulatory walls are breaking down that previously have restricted or limited affiliations between banks, securities firms, and insurance companies. This makes sense in light of the trends currently taking place in our economy: globalization, rapid technological change, and demonopolization. But the great truth of the Information Age is that the new telecommunications technologies that financial services giants use to create and market stocks, bonds, insurance policies, and loans to homes and business have a certain Dickensian quality to them: we have the best of wires and the worst of wires.

Electronic commerce can allow corporations to become more efficient and workers more productive. But this same technology can avail financial services conglomerates of the opportunity to track personal information, compile sophisticated, highly personal consumer profiles of peoples' buying habits, hobbies, financial information, health information, and other data.

As a consequence, as our nation moves to allow securities, insurance companies, and banks to affiliate, we must recognize that the resulting conglomerates will have virtually unprecedented access to the most sensitive personal and financial information, and they will be largely free to share this information among the various affiliates or even sell it to others. The companies say this will produce "synergies" that will benefit the consumer. But it may also facilitate intrusions into personal privacy.

What will this brave new world look like?

- When a husband dies, will the life insurance company tip off the securities affiliate to cold call the grieving widow as soon as she's received the check from her deceased husband's insurance policy in order to try and sell her stocks and bonds?
- Will a bank deny a consumer a loan, because information it's obtained from its affiliated medical insurance company indicates that he or she has cancer?
- Will a bank share or sell information about a consumer's credit card or check purchases with affiliated or non-affiliated parties?

The answer is YES. These companies will exploit their access to consumer personal information whenever they see a business advantage in doing so. The consequences for consumers can be disastrous. Just a few months ago, for example, the SEC signed a consent decree with NationsBank for making

misrepresentations to their bank customers that the risky derivative securities their operating subsidiary was going to try to sell them were as safe as CDs. According to the consent decree:

NationsBank assisted registered representatives in the sale of the Term Trusts by giving the representative maturing CD lists. This provided the registered representatives with lists of likely prospective clients. Registered representatives also received other NationsBank customer information, such as financial statements and account balances. These NationsBank customers, many of whom had never invested in anything other than CDs, were often not informed by their NationsSecurities registered representatives of the risks of the Term Trusts that were being recommended to them. Some of the investors were told that the Term Trusts were as safe as CDs but better because they paid more. (unquote)

In reality the "Term Trusts" that NationsSecurities was selling the public consisted of funds that invested in risky derivatives that largely have lost value for investors. We need to protect the public against the type of abuses of bank customers' privacy that this episode has so dramatically exposed. Moreover, a letter I recently received from the SEC indicates that a proposed rule to strengthen privacy protection has been languishing before the NASDR for over a year without action and that the proposed rule may need to be strengthened. In addition, the SEC letter indicates that there are gaps in SEC authority to protect the privacy of mutual fund investors and investment adviser customers. The legislation I am introducing today would address problems in each of these areas.

I think we should all be able to agree that consumers have a right to know when personal information is being collected about them. They should receive adequate and conspicuous notice whenever any personal information collected is intended to be reused or sold for marketing purposes. And, most importantly, they should have the right to say "NO" and to curtail or prohibit the use or resale of their personal information.

Current law provides consumers very little protection for their private financial records. The Right to Financial Privacy Act applies only to the federal government. The Fair Credit Reporting Act applies only to consumer reports provided by consumer reporting agencies. It generally exempts a bank's disclosure of its customers' account records. Moreover, a 1996 amendment to that Act has weakened the restrictions on transfers of financial information among persons related by common ownership or control. State law is also inadequate, because the vast majority of states lack laws which establish any meaningful restrictions on banks disclosing customers' records to non-governmental entities. Only seven states -- Alaska, Connecticut, Illinois, Louisiana, Maine, and Maryland -- have financial privacy statutes that forbid disclosures of confidential financial information to private as well as governmental entities. One state -- California -- has a statute constitutional guarantee of private that has been interpreted by the courts to apply to a bank's disclosure of customer financial records. Some states have recognized common law doctrines that recognize some privacy protection for financial records, but only seven states have adopted the common law doctrine of implied contract of confidentiality in the context of bank-customer relations. Unfortunately, the scope of the duties imposed by such implied contracts of confidentiality are unclear.

The two bills I am introducing today, the "Securities Investors Privacy Enhancement Act of 1998" and the "Depository Institution Customers Financial Privacy Enhancement Act of 1998" would help reverse this unfortunate trend. These twin bills would give investors in stocks and bonds, mutual funds, clients of investment advisors, as well as depository institution customers, and other consumers of other affiliates of financial services companies the privacy protections they deserve. The bills would establish under federal law the principle that financial services institutions generally must provide notice to the consumer of when information is being gathered about them, disclosure whenever the institution intends to offer such information to any other person, and a requirement for the express written consent of the consumer if the information is to be transferred or sold to any other person.

I urge my colleagues to support these two bills, and I look forward to working with all interested parties to secure their enactment.